



California Fair Political Practices Commission

April 21, 1986

Michael R. Capizzi
Assistant District Attorney
Orange County District Attorney's Office
Orange County Courthouse
P.O. Box 808
Santa Ana, CA 92702

Re: Your Request for Advice
Our File No. A-86-097

Dear Mr. Capizzi:

Thank you for your letter requesting advice concerning the lobbying provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Must Orange County or the Orange County District Attorney's Office file lobbyist employer reports which include the name of any deputy district attorney who attempts to influence legislative or administrative action on behalf of the District Attorney of Orange County?

CONCLUSIONS

1. The Section 86300 exemption for elected officials is not applicable to a deputy district attorney unless that person is acting merely as the District Attorney's messenger.

2. If any deputy district attorneys qualify as lobbyists pursuant to Section 82039 and regulation 2 Cal. Adm. Code Section 18239, they are required to file lobbyist certification papers with the Secretary of State and their names and amounts received must be reported on quarterly lobbyist employer reports.

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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3. If a deputy district attorney qualifies as a lobbyist, either the District Attorney's Office or the County must register as a lobbyist employer.

4. Even if no deputy district attorney qualifies as a lobbyist, the County, as a lobbyist employer, may be required to report the names of those deputy district attorneys who engaged in direct communication with any elective state official, legislative official, or agency official for the purpose of influencing legislative or administrative action on behalf of the District Attorney's Office.

ANALYSIS

Chapter 6 (Sections 86100 et seq.) of the Act provides for certification of lobbyists and reporting by lobbyists and their employers. Section 86300, however, expressly exempts any "elected public official acting in his official capacity" from the provisions of Chapter 6.

As you correctly stated, the District Attorney, as an elected public official, is exempt from the lobbyist provisions pursuant to Section 86300. However, it does not follow that deputy district attorneys are also entitled to this exemption. First, the exemption, by its express language, applies solely to elected public officials. Deputy district attorneys are not elected. Second, it is a fundamental rule of statutory construction that exceptions to a general rule must be narrowly construed. See Estate of Banerjee (1978), 21 Cal. 3d 527, 540. Applying this rule of statutory construction, the exemption must apply only to elected officials. Finally, you have directed our attention to Section 24100, which states: "Whenever the official name of any principal officer is used in any law conferring power or imposing duties or liabilities, it includes deputies." Section 24100 is not part of the Political Reform Act. To the extent Section 24100 conflicts with the Political Reform Act, the Act prevails. Section 81013.

The Commission, however, recognizes there may be situations when an elected public official uses a deputy merely as a messenger to communicate the official's own views concerning legislative or administrative action. For example, when an elected public official is unable to personally appear and testify at a legislative hearing, it is common for the office to send a deputy in his place for the purpose of reading the official's prepared statement. In this situation, the Commission views the deputy as merely the official's messenger; therefore, the exemption in Section 86300 would be applicable, for this situation is no different than if the official had appeared himself.

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I want to caution you, however, that this conclusion assumes that the deputy, in conveying the official's message, is in no way exercising any discretion concerning policy matters. In other words, if the deputy engaged in negotiations with members of the Legislature on behalf of the official, the deputy, in exercising his or her discretion concerning those negotiations, would not be acting as a mere messenger, but rather would be engaging in lobbying activities by attempting to influence legislative action.

To summarize, when a deputy district attorney is acting merely as the District Attorney's messenger, the exemption in Section 86300 applies. However, where the deputy district attorney exercises discretion in policy matters, then the exemption is not applicable.

Assuming the exemption is not applicable, the deputy district attorney may be required to prepare a lobbyist certification pursuant to Section 86103. A lobbyist, for the purposes of the Act is defined as:

...any individual who is employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his or her agents with any elective state official, agency official or legislative official for the purpose of influencing legislative or administrative action, if a substantial or regular portion of the activities for which he or she receives consideration is for the purpose of influencing legislative or administrative action...

Section 82039.

In regulation 2 Cal. Adm. Code Section 18239 (copy enclosed), the Commission has determined that a person comes within the definition of lobbyist if either:

(b) The person receives or becomes entitled to receive at least \$2,000 in compensation in any calendar month for influencing legislative or administrative action. Compensation received by a full time employee engaged primarily to perform services other than influencing legislative or administrative action, or for administrative testimony, shall not be included in computing the amount of compensation in this subsection.

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(c) The person receives or becomes entitled to receive any amount of compensation for engaging in direct communication, other than administrative testimony, with qualifying officials for the purpose of influencing legislative or administrative action on at least 25 separate occasions in any two consecutive calendar months.

2 Cal. Adm. Code Section
18239(b) and (c).

The terms "direct communication" and "influencing legislative or administrative action" are defined in the regulation.

If any deputy district attorney qualifies as a lobbyist, he or she is required to file a lobbyist certification. If a deputy district attorney does not qualify as a lobbyist, he or she would not file a lobbyist certification; however, as I will discuss later, the County may be required to report the deputy district attorney's activities.

Should a deputy district attorney qualify as a lobbyist, be required to prepare and file a lobbyist certification, the District Attorney's Office or the County would be required to register as a "lobbyist employer."

As defined in Section 82039.5, "lobbyist employer" means any person, other than a lobbying firm, who:

(a) Employs one or more lobbyists for economic consideration, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action, or

(b) Contracts for the services of a lobbying firm for economic consideration, other than reimbursement for reasonable travel expense, for the purpose of influencing legislative or administrative action.


Considering the fact that the deputy district attorney is a county employee as well as an employee of the District Attorney's Office, both the County and the District Attorney's Office would qualify as lobbyist employers. However, in order to avoid duplicative reporting, either the District Attorney's Office or the County could choose to register as the lobbyist employer. Since the County is currently a lobbyist employer, the District Attorney's Office could avoid the registration and reporting requirements so long as the required information is reported by the County.

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The County, as a lobbyist employer, is required to report the activities of each person who qualifies as a lobbyist, and, furthermore, under Section 86116 the County is also required to report the name and title of each employee (whether or not the individual is a lobbyist) who engages in direct communication with any elective state official, legislative official or agency official, for the purpose of influencing legislative or administrative action on behalf of the County. Under regulations currently being considered for adoption by the Commission, the County would be required to report the name of any deputy district attorney who (1) engaged in direct communication with an elective state official, legislative official, or agency official on behalf of the District Attorney's Office and (2) spent 10 percent or more of his or her compensated time in specified lobbying activities. See enclosed notice and text of proposed regulation 2 Cal. Adm. Code Section 18616.5. Therefore, as I mentioned earlier, even though a deputy district attorney is not considered a lobbyist under the Act, some reporting may nonetheless be required.

If you have additional questions regarding this matter, please call me at (916) 322-5901.

Sincerely,



Kathryn E. Donovan
Counsel
Legal Division

KED:JG:sm
Enclosure

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March 17, 1986

Legal Division
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Gentlemen:

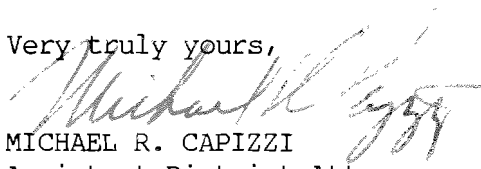
Your opinion is requested on the question of whether a County as a lobbyist employer must report pursuant to Government Code section 86116(f) the names of deputy district attorneys who attempted to influence legislative or administrative action when the attempt was not on behalf of the county but rather on behalf of the District Attorney.

In our opinion these contracts need not be reported. The District Attorney is exempt from Chapter 6 of the Political Reform Act. (G.C. section 86300) Likewise, the acts of the deputy district attorneys are not acts on behalf of the county but rather constitutes an elected public official acting in his official capacity through his deputies. It is well settled that a deputy's functions are those of the officer in whose stead he acts and he is not the private agent of that individual. That is, the deputy and the person holding office are, in contemplation of law, one and the same person, and the acts of the deputy are considered those of the principal. For a general discussion of the subject see, 52 Cal.Jur.3D, Public Officers sections 317, 321. Also, Government Code section 24100 provides "Whenever the official name of any principal officer is used in any law conferring power or imposing duties or liabilities, it includes deputies."

The fact that the deputies are paid with county tax dollars is irrelevant. To reason otherwise would require the County to report the activities of its elected officials who are also county employees. Such a result would render meaningless the exemption for the elected official if, even though he was not required to report his activities, his employer was required to so report.

We would appreciate your confirming that the County of Orange need not report the activities of deputy district attorneys pursuant to Government Code section 86116 under the circumstances described in this letter.

Very truly yours,


MICHAEL R. CAPIZZI
Assistant District Attorney

MRC/lp
cc: Ed Ferguson



California Fair Political Practices Commission

March 21, 1986

Michael R. Capizzi
Assistant District Attorney
Orange County Courthouse
P.O. Box 808
Santa Ana, CA 92702

Re: A-86-097

Dear Mr. Capizzi

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact the Technical Assistance and Analysis Division at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh